



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Environmental Technologies Group, Inc.

**File:** B-236813.2

**Date:** December 20, 1989

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### DIGEST

1. Where agency reasonably determined that stated evaluation scheme was defective because it did not reflect the agency's actual needs, agency is not required to make award to protester whose price was evaluated as low under defective evaluation scheme.
2. Protester may not be awarded the costs of filing and pursuing protest where General Accounting Office properly dismissed protest as academic, since no decision on the merits of the protest was issued.

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### DECISION

Environmental Technologies Group, Inc. (ETG), protests a decision by the Army Communications-Electronics Command to revise the evaluation scheme and to request an additional round of best and final offers under request for proposals (RFP) No. DAAB07-89-R-P001. The protester argues that the agency should instead award a contract to ETG, whose price would have been low under the unrevised evaluation scheme.

We deny the protest.

On December 16, 1988, the agency issued the solicitation for seven lightweight artillery meteorological systems, with options, support services and additional items, including radiosondes.<sup>1/</sup> The solicitation directed offerors to submit an offer for a basic requirement of 500 radiosondes and priced options for a 5-year period, in 12 range quantities, from 0-1,000 up to 11,000-12,000 units. The solicitation provided for award based on the "best value to the

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<sup>1/</sup> A radiosonde is a militarized weather balloon.

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government with appropriate consideration given to the major factors Technical, Price, and Management" and provided that prices would be evaluated based on the basic requirement plus the price proposed for all options, with options evaluated at each and every range quantity for all items for each option year.

The solicitation contained three line items for three different types of radiosondes and, as stated above, 12 ranges in each option year. Thus, although the solicitation allowed the agency to exercise an option for a maximum of 180,000 radiosondes (a maximum of 12,000 each of the three types, or 36,000 per year over five 1-year option periods), it inadvertently created an evaluation scheme whereby prices were evaluated on the basis of 6-1/2 times the number of radiosondes that could be purchased under the solicitation (12 ranges, which added together totaled 78,000 radiosondes, of three types over a 5-year period, or 1,170,000). Upon receipt of best and final offers on July 11, 1989, the contracting officer realized her error and directed that prices be evaluated based upon a realistic estimate of the number of radiosondes that might be purchased under the solicitation.

The price evaluation showed that although the protester offered a lower price if proposals were evaluated as stated in the solicitation, the proposal of Rospatch Electronics System Division was lower if the agency considered the price of the radiosondes that could actually be purchased. After reviewing the technical evaluation, the contracting officer, ignoring the evaluation scheme, determined that Rospatch offered the best value to the government and awarded a contract to Rospatch on August 25, 1989. ETG filed a protest with our Office on September 1, based upon the agency's failure to follow the evaluation scheme set forth in the solicitation in making its award decision.

Based upon the advice of counsel, the contracting officer decided that ETG's protest had merit; she consequently announced her decision to terminate the contract with Rospatch and to issue a request for another round of best and final offers, using a revised evaluation scheme that calculated prices based on the agency's actual needs for radiosondes. The agency advised our Office of the action taken on September 28, and we dismissed the protest as academic on the next day. ETG has now filed this protest, requesting reconsideration of our decision to dismiss its original protest and objecting to the agency's decision to request another round of best and final offers.

The protester argues that the agency should not request a further round of best and final offers but should make award to ETG based on its best and final offer of July 11. The protester contends that the government was aware of the heavy weight given to radiosonde prices, because the protester spoke with agency employees concerning the issue on several occasions and was assured that the agency intended to design its evaluation scheme as outlined in the solicitation. The protester states that it reasonably relied upon the agency personnel because the radiosondes are expendable, and it interpreted the solicitation as an effort to procure the agency's radiosonde needs for a period extending beyond the 5-year period of the contract. The protester notes that agencies frequently use evaluation criteria to cover contingencies and that it reasonably believed that the agency was doing so in this case.

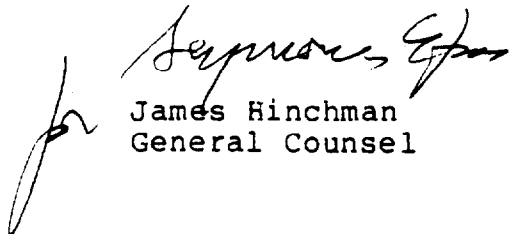
The protester cites our decision in Sperry Corp., 65 Comp. Gen. 715 (1986), 86-2 CPD ¶ 48, which states that in deciding what remedial action is appropriate in a particular situation, our Office will consider a number of factors including the seriousness of the procurement deficiency, the degree of prejudice to other offerors or the integrity of the competitive procurement system, and the good faith of the parties. The protester contends that the integrity of the procurement system mandates award here to ETG as the low offeror. We disagree.

We have previously held that a solicitation that does not permit an accurate assessment of the probable cost of an award to an offeror is defective and that an agency may not make award based on a price evaluation scheme that does not provide for the lowest ultimate cost to the government. See KISS Engineering Corp., 65 Comp. Gen. 549 (1986), 86-1 CPD ¶ 425. The record clearly shows that the protester, while low under the stated evaluation scheme, was not low under any rational evaluation scheme that reflected the actual quantity of radiosondes needed by the agency. We therefore cannot find unreasonable the agency's decision to forego award under the solicitation here until such time as it could modify the solicitation to provide for an accurate assessment of the actual cost to the government.

With regard to its original protest, the protester argues that its outstanding request for award, for the costs of filing and pursuing its protest and for proposal preparation costs prevent our finding that protest to be academic. Because we find the agency's corrective action to have been reasonable, we have no basis for directing award of a contract to ETG in view of the obvious defects in the price evaluation scheme. Nor is there at present any basis for

awarding ETG the costs of preparing its proposal, since under the agency's proposed corrective action, the protester will be allowed the opportunity to compete for award of a contract. See Monarch Enters., Inc.--Request for Reconsideration, B-233724.2, May 16, 1989, 89-1 CPD ¶ 463. Further, where, as here, an agency takes appropriate action in response to a protest without our Office issuing a decision on the merits, we will not award to the protester the costs of filing and pursuing the protest. Storage Tech. Corp., B-235308, May 23, 1989, 89-1 CPD ¶ 495.

The protest is denied.



James Hinchman  
General Counsel